

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23374 OF 2006

Between:

Manoj Mansion Flat Owners
Welfare Association

. . .Petitioner

AND

Municipal Corporation of Hyderabad
and others

. . .Respondents

:: ORDER ::

Counsel for the Petitioner : Shri B.Venkat Rama Rao

10th November, 2006

-

PER G.S.SINGHVI, CJ

The petitioner is an association of flat owners of Manoj Mansion, which is said to have been constructed by respondent Nos.2 to 4 in premises bearing Nos.3-5-141/1/A and 3-5-141-1-A/2/1 to 3 situated at Ramkote, Eden Bagh, Hyderabad. It filed a suit in the Court of one of the Junior Civil Judges, City Civil Court, Hyderabad for restraining respondent Nos.2 to 4 from raising construction in the parking area and common open space. The suit stands registered as O.S.No.518 of 2006. The application for temporary injunction filed by the association is also pending before the concerned Court. However, without waiting for disposal of the application for injunction, the petitioner has rushed to this Court with the complaint that the authorities of Municipal Corporation of Hyderabad (for short, 'the Corporation') have not taken any action to stop the alleged illegal construction being raised by respondent Nos.2 to 4.

We have heard Shri B.Venkata Rama Rao, learned counsel for the petitioner and perused the record.

In our opinion, the writ petition is liable to be dismissed because the petitioner has already availed an effective alternative remedy available to it by filing civil suit. The question whether respondent Nos.2 to 4 are raising construction in the parking area or open space meant for use by the flat owners is a pure question of fact which can be decided by the civil Court on the basis of evidence produced by the parties in the proceedings of the suit instituted by the petitioner. Likewise, the question whether the alleged construction being made

by respondent Nos.2 to 4 is contrary to the plan sanctioned by the competent authority of the Corporation can be adjudicated by the civil Court. Therefore, we do not find any justification to entertain the grievance of the petitioner.

With the above observations, the writ petition is dismissed.

However, it is made clear that dismissal of the writ petition shall not prejudice the cause of the petitioner in the pending suit.

As a sequel to dismissal of the main petition, W.P.M.P. No.29784 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 10.11.2006

kvnis